

EVENT VIOLATION INSPECTOR'S STATEMENT

Company/Mine: Consolidation Coal Co/Emery Deep Mine
Permit #: C/015/015

NOV # 03-38-1-1
Violation # 1 of 1

A. SERIOUSNESS

1. What type of event is applicable to the regulation cited? Refer to the DOGM reference list of event below and remember that **the event is NOT the same as the violation**. Mark and explain each event.

- | | | |
|-------------------------------------|----|--|
| <input checked="" type="checkbox"/> | a. | Activity outside the approved permit area. |
| <input type="checkbox"/> | b. | Injury to the public (public safety). |
| <input type="checkbox"/> | c. | Damage to property. |
| <input checked="" type="checkbox"/> | d. | Conducting activities without appropriate approvals. |
| <input checked="" type="checkbox"/> | e. | Environmental harm. |
| <input type="checkbox"/> | f. | Water pollution. |
| <input checked="" type="checkbox"/> | g. | Loss of reclamation/revegetation potential. |
| <input type="checkbox"/> | h. | Reduced establishment, diverse and effective vegetative cover. |
| <input type="checkbox"/> | i. | No event occurred as a result of the violation. |
| <input type="checkbox"/> | j. | Other. |

Explanation: The activity occurred outside the permit area, between the permit area fence line and the county road. There was no prior approval for driving construction equipment over the undisturbed area to install the wind-fence support poles. The environmental harm came from the effects of the vehicle travel (vacuum truck and pole setting rig) over the undisturbed area: destruction of existing vegetation and soil structure and aggregation, creating a powdery surface of soil. The loss of reclamation potential comes from the loss of soil organic matter to the vacuum hose and the loss of topsoil resource to wind erosion.

2. Has the even occurred? Yes

If yes, describe it. If no, what would cause it to occur and what is the probability of the event(s) occurring? (None, Unlikely, Likely).

Explanation: The area was affected by wind-blown coal fines and under NOV # N03-39-1-1. The entire 1.0 acre had been traversed by a vacuum truck in a good-faith effort to abate NOV # N03-39-1-1. Five power poles were installed at approximately 35 foot intervals along the perimeter fence, outside of the permit area, for the purpose of supporting a wind break. The installation was done with a pole setting rig. The equipment was driven along the fence line and out across the permit area to the road.

3. Did any damage occur as a result of the violation? Yes

If yes, describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not been discovered by a DOGM inspector? Describe this potential damage and whether or not it would extend off the disturbed and/or permit area.

Explanation: Where the heavy equipment traversed this course, the vegetation and soil were pulverized along the route. On August 5, 2003, there were five inch ruts in the powdery soil. Where vacuuming had occurred, there was no organic litter remaining on the soil in the rest of the 1.0 acre site.

B. DEGREE OF FAULT (Check the statements which apply to the violation and discuss).

- ☐ Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.

Explanation: _____

- ☒ Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care.

Explanation: The operator had to have been aware of the DOGM regulations for protecting the topsoil resource. Two violations written in 2002 were for failure to protect the topsoil resource. After the Division's review of the abatement plans for the earlier NOV # N03-39-1-1, the Operator knew that the Division did not want the area to be disturbed any further.

- ☒ If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

Explanation: While installing the power poles, the operator traversed the same ground over and over, limiting the damage to a specific byway. The Operator did stop the installation of the power poles voluntarily, before the inspection on August 5, 2003.

- ☒ Was the operator in violation of a specific permit condition?

Explanation: Yes. Permit Conditions specified in R645-300-140, R645-300-141, R645-300-142, and R645-300-143. The operator was conducting coal mining and reclamation operations outside the permit area and outside the bonded area. The installation of wind fence support poles was without prior Division approval. Designs for the structure under construction had not been presented to the Division. The operator did not remove and segregate topsoil from the area disturbed before coal mining and reclamation operations which is a performance standard.

- ☒ Has DOGM or OSM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken.

Explanation: On October 25, 2002, NOV # N02-39-2-1, was written when the permittee had a car in the undisturbed diversion and one car and one truck parked on top of vegetation and topsoil. The undisturbed area was well driven by vehicles. NOV # N02-39-2-1 was written for failure to protect vegetation and topsoil in the undisturbed area. (The undisturbed area was within the disturbed area boundry.) NOV # N02-39-1-2, 1 of 2 was written on September 13, 2002 for having a semi-trailer on the vegetation and topsoil in the exact same area. NOV # N02-39-1-2, 2 of 2 was written for failure to protect vegetation and topsoil in the undisturbed area.

C. GOOD FAITH

1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give date) and describe the measures the operator took to comply as rapidly as possible.

Explanation: The site was raked, broadcast seeded and hydro mulched on August 19, 2003. The operator seeded additional area within the permit boundary (along the south fence and in the southeast corner) that was affected by installation of power lines as well.

2. Explain whether or not the operator had the necessary resources on site to achieve compliance.

Explanation: The operator used hand labor to rake the site. Fresh seed was ordered for the seeding. The seed was broadcast using hand labor. A contractor performed the hydromulching.

3. Was the submission of plans prior to physical activity required by this NOV / CO? No If yes, explain.

Explanation: _____

Priscilla W. Burton
Authorized Representative

Signature

August 19, 2003
Date